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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,804	01/26/2004	Brandon A. Grooters	ACER-45265	9751
116 7590 10/01/2009 PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108			EXAMINER IDOWU, OLUGBENGA O	
			ART UNIT 2425	PAPER NUMBER
			MAIL DATE 10/01/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/764,804

**Applicant(s)**

GROOTERS, BRANDON A.

**Examiner**

OLUGBENGA IDOWU

**Art Unit**

2425

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7, 9-15 and 17 - 41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☒ Claim(s) 1-7, 9-15 and 17 - 41 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s)/Mail Date \_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 101***

The claimed invention with regards to claims 17 – 22, 27 – 29, 37 – 38 and 41 directed to non-statutory subject matter. Claims 17 – 22, 27 – 29, 37 – 38 and 41 are directed towards an electronic program guide system wherein the system could be executed as a program of instruction as described in [0020] of the specification. Program of instructions is interpreted as software. Software are non-statutory subject matter.

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thornton*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 3, 9, 11, 17 and 19 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 7 and 8 of U.S. Patent No. 6 684 399 in view of Zigmond, patent number: US 6 215 483 B1.

For example, note the relationship between the instant and the reference claims.

3. As per instant claims 1, 9 and 17, with regards to limitations "a first information handling system for obtaining programming information from a program information source and generating a program guide based upon the obtained program information; a second information handling system coupled to said first information handling system, for receiving the program guide by causing said first information handling system to transmit the program guide to said second information handling system; and said first information handling system being configured to search a worldwide network for information regarding a transitory broadcast event and to incorporate the transitory event information into the generated program guide, said transitory broadcast event being a scheduled live broadcast event" is analogous to the reference claims 1, 9 and 17 "obtaining program guide information from a program information source; Searching a network for information regarding a transitory broadcast event; in the event such transitory broadcast event information is found, combining said transitory broadcast event information with said obtained program guide information to create an electronic program guide"

4. Instant claims 1, 9 and 17 "wherein the program guide has a predetermined number of established program channels, said first information handling system being configured to add the information regarding the transitory broadcast event on the

worldwide network as a temporary channel created in addition to the predetermined number of established program channels in the program guide" is analogous to reference claim 7.

5. Also, instant claims 3, 11 and 19 are analogous to reference claim 8.

The difference between the instant claim and reference claim being "merging EPG information prior to transmitting the program guide to said second information handling system".

In an analogous art, Zigmond teaches merging EPG information prior to transmitting the program guide to said second information handling system (merging EPG data before transmission, col. 9, lines 40 - 59).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the reference application data search system by including a system that combines multiple EPG data as described in Zigmond data combining system for advantages of providing a large variety of information to the user and combining the information before transmission so that the user device is not required to perform major processing.

6. Claims 2, 4 – 17, 9-10, 12- 15, 18 and 20 – 41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in

independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OLUGBENGA IDOWU whose telephone number is (571)270-1450. The examiner can normally be reached on IFP.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Pendleton can be reached on 5712727527. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/764,804

Page 6

Art Unit: 2425

Examiner, Art Unit 2425

/Brian T. Pendleton/  
Supervisory Patent Examiner, Art Unit 2425